



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

Mr. John Steiner
Division Chief
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0519

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38970.

The City of Austin (the "city") received an open records request for certain information pertaining to the procurement and invitation for bids for the Austin-Bergstrom International Airport terminal project. You seek to withhold two documents that are responsive to the request.¹ With regard to one of the documents, you explain:

As part of the evaluation of bidders, the [city] requested information from the City of Denver, Colorado, concerning the performance of a contractor on the Denver International Airport project. The information was provided to the City orally with a request that the information be considered 'confidential.' The information was reduced to a chart

You ask this office to determine, pursuant to section 552.305 of the Government Code, whether the chart created by the city must be released to the requestor. Consequently, in accordance with the practice this office established in Open Records Decision No. 575 (1990), we notified representatives of the Denver International Airport that we received

¹We assume that all other responsive documents have been released to the requestor.

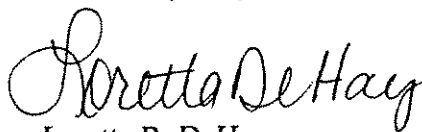
your request for an open records decision regarding this information.² In our notification, this office requested an explanation as to why any of the information at issue was excepted from public disclosure, with the caveat that unless we received such explanation within a reasonable time in this office would instruct the city to disclose the information.

More than three weeks have elapsed since this office issued its notice, but we have not received any explanation as to why this document should not be released. Consequently, we have no basis for applying any exceptions to required public disclosure to this information. *See Open Records Decision No. 552 (1990).*³ The city therefore should release this record.

You characterize the second record you seek to withhold as a "document . . . produced by an attorney in the City Attorney's office for a meeting of the bid team." You contend this record is excepted from required public disclosure by section 552.107(1) of the Government Code, which protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See Open Records Decision No. 574 (1990).* In instances where an attorney represents a governmental entity, this exception protects only an attorney's legal advice and confidential attorney-client communications. *Id.* After reviewing this record we conclude that the city may withhold it in its entirety pursuant to section 552.107(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

²You state that you have also notified the appropriate officials with the City of Denver about the open records request.

³We note that information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). Consequently, this record must be released, notwithstanding any agreement between the city and City of Denver specifying otherwise.

LRD/RWP/rho

Ref.: ID# 38970

Enclosures: Submitted documents

cc: Mr. Ronald Habitzreiter
Attorney at Law
1208 West Avenue
Austin, Texas 78701
(w/o enclosures)